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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GILBERT A. HARING, et al.,

Petitioners,

—v.—

JOHN FRANKLIN PROSISE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....iii

INTEREST OF AMICUS CURIAE.....1

STATEMENT OF THE CASE.....2

SUMMARY OF ARGUMENT.....2

ARGUMENT.....6

I. A § 1983 DAMAGE CLAIM IS NOT A DEVICE TO ATTACK A CONVICTION COLLATERALLY AND IS NOT WAIVED BY A GUILTY PLEA.....6

II. RESPONDENT'S § 1983 DAMAGE CLAIM IS NOT PRECLUDED BY 28 U.S.C. § 1738 AND THE PRINCIPLES OF COLLATERAL ESTOPPEL WHICH IT CODIFIES.....12

A. Virginia Doctrine Of Collateral Estoppel Does Not Bar Respondent's Damage Claim.....14

B. General Principles Of Collateral Estoppel Only Preclude Relitigation Of Issues Actually Or Necessarily Determined In A Prior Proceeding.....15

1. A Guilty Plea Has No Collateral Estoppel Effect On Any Issues Since None Has Been Actually Litigated Or Necessarily Decided.....19

Page

2. Even Assuming Arguendo That A Guilty Plea Has Collateral Estoppel Effect On Issues Related To The Elements Of The Crime, Fourth Amendment Issues Are Entirely Unrelated To Factual Guilt And Are Neither Actually Nor Necessarily Determined Through A Guilty Plea.....23

C. Application Of Collateral Estoppel To Preclude § 1983 Fourth Amendment Claims Never Before Raised Is Unsupported By Any Sound Policy Considerations.....26

CONCLUSION.....34

TABLE OF AUTHORITIES

Cases: Page

Allen v. McCurry, 449 U.S. 90 (1980) ..... passim

Bishop v. Wood, 426 U.S. 341 (1976) ... 15

Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) 8, 9

Blackledge v. Perry, 417 U.S. 21 (1975) 10

Bordenkircher v. Hayes, 434 U.S. 357 (1978) 28

Brady v. United States, 397 U.S. 742 (1970) ..... passim

Carey v. Piphus, 435 U.S. 247 (1978) ... 8

Carlson v. Green, 446 U.S. 14 (1980) 9, 30

City of Newport v. Facts Concert, Inc., 453 U.S. 247 (1981) 30

Commissioner v. Sunnen, 333 U.S. 591 (1947) 18

Cramer v. Crutchfield, 648 F.2d 943 (4th Cir. 1981) 12

Elkins v. United States, 346 U.S. 206 (1960) 31

Ellis v. Dyson, 421 U.S. 476 (1975) 17, 20

Emich Motors Corp. v. General Motors Corp., 340 U.S. 558 (1951) ... 19

Page

Frank v. Mangum, 237 U.S. 309 (1915)..19

Frisbie v. Collins, 342 U.S. 519 (1952).....29

Iowa v. Kaufman, 51 Iowa 578, 2 N.W. 275 (1879).....22

Johnson v. Zerbst, 304 U.S. 458 (1938).....11

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1962).....4, 20

Kremer v. Chemical Construction Co., 72 L.Ed.2d 262 (1982)....4, 14, 16, 26

Lawlor v. National Screen Service, 349 U.S. 322 (1955).....20

Linkletter v. Walker, 381 U.S. 618 (1965).....25

McMann v. Richardson, 397 U.S. 759 (1970).....21

McNeese v. Board of Education, 373 U.S. 668 (1963).....32

Menna v. New York, 423 U.S. 61 (1975).....10, 11, 24

Monroe v. Pape, 365 U.S. 167 (1961).....8, 9, 32

Montana v. United States, 440 U.S. 147 (1979).....14, 16, 17, 27

North Carolina v. Alford, 400 U.S. 25 (1971).....21, 22, 23

Page

Owen v. City of Independence, 445 U.S. 622 (1980).....29

Parker v. North Carolina, 397 U.S. 790 (1970).....21

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).....16

Patsy v. Board of Regents, 73 L.Ed.2d 172 (1982).....33

Preiser v. Rodriguez, 411 U.S. 475 (1973).....7, 12

Prosise v. Haring, 667 F.2d 1133 (4th Cir. 1982).....23

Robertson v. Wegmann, 436 U.S. 584 (1978).....29

Shneckcloth v. Bustamonte, 412 U.S. 218 (1973).....25

Smith v. Heath, 691 F.2d 220 (6th Cir. 1982).....8

Southern Jam, Inc. v. Robinson, 675 F.2d 94 (5th Cir. 1982).....17

Steffel v. Thompson, 415 U.S. 452 (1974).....32

Stone v. Powell, 428 U.S. 465 (1976).....5, 25, 31

Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal.2d 601, 375 P.2d 439 (1962).....20

Tollett v. Henderson, 411 U.S. 258 (1973).....passim

Page

United States v. Crews, 445 U.S. 463 (1980).....29

United States v. International Building Co., 345 U.S. 322 (1952)..20

Wooley v. Maynard, 430 U.S. 705 (1977).....17

Other Authorities:

U.S. Const. Amend. IV.....11

28 U.S.C. § 1738.....passim

42 U.S.C. § 1983.....passim

Federal Rules of Civil Procedure 12(b).....33

Federal Rules of Civil Procedure 56..33

Annotation, Conviction or acquittal as evidence of the facts on which it was based in civil action, 18 A.L.R.2d 1287 (1951).....20

INTEREST OF AMICUS CURIAE*

The American Civil Liberties Union is a nationwide, nonpartisan organization of over 250,000 members dedicated to the protection of the civil rights and liberties of Americans. Since its founding in 1920, one of the constant concerns of the ACLU has been the need to provide adequate legal mechanisms to protect against and remedy violations of constitutionally protected rights. Foremost among those mechanisms are the sanctions available under § 1983 against those state officials who abuse the official power entrusted to them.

The ACLU has frequently appeared before this Court in support of the historic role of 42 U.S.C. § 1983 in remedying violations of federal civil rights, and in deterring departure from constitutional standards.

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*Letters of consent to the filing of this brief are being lodged with the Clerk of the Court pursuant to Rule 36.2 of the Rules of this Court.

STATEMENT OF THE CASE

Amicus relies on the Statement of the Case set out in Brief for Respondent.

SUMMARY OF ARGUMENT

Petitioners, police officers sued under § 1983 for violating respondent's Fourth Amendment rights, contend that the principle of collateral estoppel (issue preclusion) codified in 28 U.S.C. § 1738 shields them from liability even though (1) the respondent pleaded guilty in state court; (2) he never presented the search and seizure issue to the state court; (3) the state court did not expressly consider the search and seizure issue; and (4) this Court's decisions make certain that the issue was not implicitly decided[1] since (a) there are myriad reasons why defendants plead guilty;

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1. See infra at 19-26.

(b) an intelligent guilty plea is not logically inconsistent with antecedent constitutional violations; and (c) Fourth Amendment issues are entirely unrelated to guilt.

Petitioners' underlying premise -- that the § 1983 action here is designed to and inevitably would undermine the finality of respondent's conviction -- is mistaken, since his damage claim is in fact wholly independent, and does not seek any damages arising from his conviction. Although the Court has held that a valid guilty plea is not generally vitiated by antecedent constitutional violations, e.g., Tollett v. Henderson, 411 U.S. 258 (1973), it has never indicated that such violations are "waived" by the plea, or that they cannot serve as the basis for § 1983 damage actions, so long as recovery is not predicated on the conviction or any of its consequences.

Nor do principles of collateral estoppel applicable through 28 U.S.C. § 1738 preclude respondent's damage claim. If the proper measure of estoppel is Virginia law, as suggested by Kremer v. Chemical Construction Co., 72 L.Ed.2d 262 (1982), then the Fourth Circuit's reading of Virginia law, authoritative under the circumstances here presented, makes clear that respondent's guilty plea does not preclude litigation of the Fourth Amendment issues raised here.

If general principles of collateral estoppel are relevant, estoppel is improper because it applies only to issues actually litigated, and no issues are litigated by a guilty plea. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 157 (1962) (dictum). Moreover, even if, contrary to this Court's repeated suggestion, a guilty plea could estop relitigation of elements of the crime charged, preclusion

would still be improper, because the Fourth Amendment issues raised in respondent's damage claim are entirely unrelated to factual guilt, Stone v. Powell, 428 U.S. 465 (1976), and were neither actually nor necessarily determined by his guilty plea. See Brady v. United States, 397 U.S. 742 (1970); Tollett v. Henderson, supra.

Finally, if the Court is free despite § 1738 to apply any version of collateral estoppel other than that contained in Virginia law or general principles, considerations of sound policy concerning the criminal justice system, § 1983, and enforcement of the Fourth Amendment all strongly suggest that preclusion is improper here.

ARGUMENT

I. A § 1983 DAMAGE CLAIM IS NOT A DEVICE TO ATTACK A CONVICTION COLLATERALLY AND IS NOT WAIVED BY A GUILTY PLEA

Petitioners' entire argument rests on an incorrect assumption which is best put to one side at the outset, namely that respondent's § 1983 damage action is intended to attack the validity of his conviction collaterally, or that it would inevitably call that conviction into question. Petitioners' suggestion that the Fourth Circuit's decision will encourage defendants to undermine the state's legitimate expectation of finality in convictions by permitting defendants to recover damages for incarceration resulting from Fourth Amendment violations is unfounded and illusory.

We do not understand either the court below or respondent here to disagree that § 1983 is unavailable as a device for state prisoners to challenge their convictions, either directly or indirectly.

"Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity or fact or length of their confinement and that specific determination must override the general terms of § 1983." Preiser v. Rodriguez, 411 U.S. 475, 490 (1973). Since § 1983 is unavailable to challenge the fact of confinement to secure release from custody, it follows inescapably that § 1983 is also unavailable to seek damages resulting from continued confinement.[2] The damage action involved in this

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2. A voluntary and intelligent guilty plea constitutes a defendant's consent to judgment of conviction. Brady v. United States, 397 U.S. 742, 748 (1970). This consent precludes the assertion of a damage claim resulting from the fact of conviction, and any attempt to measure damages by any of the consequences of conviction, and we are in agreement with petitioners to that extent. See Br. for Pet. at 15 n.5. In addition, of course, as petitioners observe, basing damages on conviction would implicate concerns of comity, since the federal judgment would (footnote continued on following page)

case, however, does not violate that principle.

(footnote continued from preceding page) be an implied rebuke to the state judgment. But as we show infra at 19-26, a § 1983 judgment is not inconsistent with the guilty plea, and implicates no concerns of comity, where, as here, the damages do not include conviction and its consequences.

Of course substantial damages must still be made available in these circumstances, and would include meaningful compensation in recognition of the magnitude of the personal interests trammeled by violation of the Fourth Amendment right itself, see Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 408-09 & n.9 (1971)(Harlan, J., concurring), Monroe v. Pape, 365 U.S. 167, 196-97 (1961)(Harlan, J., concurring); damages for mental and emotional distress caused by denial of the right, see Carey v. Piphus, 435 U.S. 247, 263-64 (1978); damages for actual physical and property injuries suffered in the course of the illegal search and seizure; and punitive damages for willful, malicious or reckless conduct, see Carey, 435 U.S. at 257, n.11. See, e.g., Smith v. Heath, 691 F.2d 220 (6th Cir. 1982).

Contrary to petitioners' ill-founded argument, respondent's § 1983 action had quite a different purpose than collateral attack of his conviction, namely compensation for and deterrence of constitutional violations. See, e.g., Carlson v. Green, 446 U.S. 14 (1980); Monroe v. Pape, 365 U.S. 167, 172-187 (1961). Just as the actions for which respondent seeks redress are antecedent to the criminal proceedings leading to his conviction, those goals are quite independent of the disposition of the charges lodged against him. Indeed, members of this Court have stressed the value of the damage remedy for Fourth Amendment violations precisely because it is independent of criminal proceedings and available not only to the guilty but to both innocent and guilty alike. See, e.g., Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 410 (1971)(Harlan, J., concurring).

Accordingly, petitioners' reliance on cases involving collateral attacks to the validity of guilty pleas to support the proposition that guilty pleas constitute a waiver of § 1983 Fourth Amendment claims (Pet.Br. 27-36) is wholly misplaced. In Tollett v. Henderscn, 411 U.S. 258, 266-67 (1973), this Court merely held that after a defendant pleads guilty "claims of prior constitutional deprivation ... are not themselves independent grounds for federal collateral relief." (Emphasis added.) Accord, Menna v. New York, 423 U.S. 61 (1975). Although "a person complaining of such 'antecedent constitutional violations' is limited in a federal habeas proceeding to attacks on the voluntary and intelligent nature of the guilty plea", Blackledge v. Perry, 417 U.S. 21, 30 (1975)(citations omitted)(emphasis added), Tollett and its progeny do not hold that such antecedent violations are waived by a plea of guilt,

especially when they are antecedent to the criminal trial and collateral to it.[3] Since respondent here is not seeking to attack his conviction, or indeed seeking any relief inconsistent with the validity of that claim, Tollett and Menna are plainly inapposite, as the Fourth Circuit

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3. Petitioners' reliance on Tollett and Menna to support their contention that respondent waived his Fourth Amendment claim is particularly inappropriate because even in the limited context of determining the scope of collateral attacks on guilty pleas, the Court explicitly disclaimed reliance on waiver concepts, holding instead that a guilty plea was a "break in the chain of events which preceded it in the criminal process" precluding the plea from being judged as illegal fruit of prior unlawful official acts. See Tollett, 411 U.S. at 266; Menna, 423 U.S. at 62 n.2. Under well established doctrine "a waiver is an intentional relinquishment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1983). A defendant's mere guilty plea (or decision not to object to the admission of illegally seized evidence, see n.4 infra) cannot under any stretch of the imagination be deemed an intentional relinquishment of the right to assert Fourth Amendment claims through § 1983.

correctly realized. 667 F.2d 1133, 1136 (4th Cir. 1982).[4]

II. RESPONDENT'S § 1983 DAMAGE CLAIM IS NOT PRECLUDED BY 28 U.S.C. § 1738 AND THE PRINCIPLES OF COLLATERAL ESTOPPEL WHICH IT CODIFIES

It is common ground that this case is governed at least in part by 28 U.S.C. § 1738, which "specifically require[s] all federal courts to give state court judgments preclusive effect whenever the

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4. Amicus believes that the Fourth Circuit's per curiam opinion in Cramer v. Crutchfield, 648 F.2d 943 (4th Cir. 1981), distinguished in Prosise, was incorrectly decided. In Cramer, the circuit without reasoning or discussion of applicable waiver principles held that a defendant's failure to object to the admission of illegally seized evidence in criminal proceedings constituted a waiver of subsequent § 1983 Fourth Amendment claims. In our view, a § 1983 damage claim based on illegal search and seizure where damages are not based in any way on subsequent conviction is no more barred by a conviction than by a guilty plea, so long as the search and seizure issue was not presented or decided in the criminal case.

Courts of the State from which the judgment emerged would do so." Allen v. McCurry, 449 U.S. 90, 96 (1980). The preclusive effect actually to be accorded the Virginia judgment here might be measured in three ways: (1) by Virginia law, under § 1738; (2) by Virginia law under § 1738 and, in addition, by the general principles of collateral estoppel which federal courts have formulated in considering federal judgments; and (3) by Virginia law and general principles, together with such modifications or exceptions as might be warranted in light of the circumstances presented, here a Fourth Amendment claim which was not raised in criminal proceedings concluded by a guilty plea.[5]

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5. In Allen, this Court did not determine how collateral estoppel should apply in federal courts considering the effect to be given state decisions. 449 U.S. at 93 n.2, 105 n.25. It therefore did not
(footnote continued on following page)

As we now show, respondent's guilty plea should not be precluded under any of these approaches.

A. Virginia Doctrine Of Collateral Estoppel Does Not Bar Respondent's Damage Claim

The Fourth Circuit comprehensively canvassed the Virginia law of collateral estoppel and properly determined that Virginia would grant no preclusive effect to respondent's conviction in a subsequent § 1983 action based on an unlawful search

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(footnote continued from preceding page) determine whether in considering a state judgment § 1738 limits federal courts to considering only the preclusive rules of the rendering state, an approach possibly relied on in Kremer v. Chemical Construction Co., 72 L.Ed.2d 262, 271 (1982) or permits consideration of general principles of collateral estoppel. See Montana v. United States, 440 U.S. 147 (1979) (analyzing preclusive effect of state judgment only under general principles, without addressing state law). Amicus suggests that this issue need not be decided here since, for the reasons presented infra, preclusive effect would not be warranted in either event.

which had not been placed at issue. 667 F.2d 1138-39.[6] Nothing in petitioners' discussion of Virginia law suggests that the Fourth Circuit erroneously interpreted Virginia law. In any event, this Court's customary deference to interpretation of state law by lower federal judges who have practiced locally and are versed in such law requires, in these circumstances, that it decline petitioners' invitation to redetermine Virginia law for itself. See Bishop v. Wood, 426 U.S. 341, 345-47 (1976).

B. General Principles Of Collateral Estoppel Only Preclude Relitigation Of Issues Actually Or Necessarily Determined In A Prior Proceeding

The conventional principles of preclusion recognized by this Court and commentators involve the related doctrines of

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6. The district court found it unnecessary to inquire into state law based on its different view of this case.

res judicata and collateral estoppel.[7] "Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." Montana v. United States, 440 U.S. 147, 153 (1979); see Allen v. McCurry, 449 U.S. at 94; Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979). "Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Allen

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7. The Restatement refers to res judicata as claim preclusion and collateral estoppel as issue preclusion. Restatement of the Law of Judgments (Second) (1982) at 131. See generally Allen v. McCurry, 449 U.S. at 94 n.5; Kremer v. Chemical Construction Co., 72 L.Ed.2d at 280.

v. McCurry, 449 U.S. at 94; Montana v. United States, 440 U.S. at 153.

Unlike the broader res judicata doctrine, which is not at issue here,[8] the

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8. Petitioners' attempt to rely on res judicata and its principle of bar (Pet. Br. 22-23), in addition to collateral estoppel, is without merit. First, it is our understanding that the lower courts were presented only with a claim of collateral estoppel. More fundamentally, res judicata does not apply in these circumstances, as this Court recognized in Allen v. McCurry, 449 U.S. at 92 n.2, 105 n.25 (leaving to lower courts application of collateral estoppel principles to facts of case), Wooley v. Maynard, 430 U.S. 705 (1977)(deciding affirmative challenge to state statute notwithstanding prior convictions for violating same statute), and Ellis v. Dyson, 421 U.S. 476 (1975)(same). See also Montana v. United States, 440 U.S. at 154. Res judicata is claim preclusion, but respondent could not have included a damage claim in his criminal case. In addition, under standard doctrine, res judicata cannot apply where, as here, the party asserting the res judicata defense was not a party to the earlier action or in privity with a party. See generally Montana v. United States, 440 U.S. at 154 n.5 and authorities cited therein. Southern Jam, Inc. v. Robinson, 675 F.2d 94 (5th Cir. 1982), relied on by petitioners (at 22), is not to the contrary, since there the parties to the state civil action and the subsequent federal action were identical.

collateral estoppel doctrine applies "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered .... The parties are free to litigate points which were not at issue in the first proceeding even though such points might have been rendered and decided at that time." Commissioner v. Sunnen, 333 U.S. 591, 598 (1947).

The collateral estoppel doctrine serves a number of important purposes: it promotes judicial economy by reducing unnecessary litigation; fosters reliance on adjudication by preventing inconsistent decisions; and where federal courts give proper preclusive effect to state court decisions, promotes comity between state and federal courts. See Allen v. McCurry, 449 U.S. at 94.

1. A Guilty Plea Has No Collateral Estoppel Effect On Any Issues Since None Has Been Actually Litigated Or Necessarily Decided

In the context of criminal judgments it is reasonably well established that "a prior criminal conviction may work an estoppel in favor of the government in a subsequent civil proceeding." Emich Motors Corp. v. General Motors Corp., 340 U.S. 558, 568 (1951); Frank v. Mangum, 237 U.S. 309, 334 (1915). However, "such estoppel only extends to matters distinctly put in issue and directly determined in the criminal prosecution." Emich, 340 U.S. at 569; Frank, 237 U.S. at 334.

Although this Court has never decided the precise estoppel effect of guilty pleas, it has suggested, with others, that a guilty plea has no collateral estoppel effect on any issues since none has been

actually litigated.[9] That suggestion has ripened into sound law, we believe, with this Court's decisions concerning plea

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9. See Kennedy v. Mendoza-Martinez, 372 U.S. 144, 157 (1962)(the fact that the defendant pleaded guilty to draft evasion "in itself may support the conclusion that his citizenship status was not litigated and thereby without more preclude his assertion of estoppel ... "); Teitelbaum Furs, Inc. v. Dominion Ins. Co., 58 Cal. 2d 601, 375 P.2d 439, 441 (1962)(Traynor, J.)("When a plea of guilty has been entered in the prior action, no issues have been drawn into controversy by a full presentation of the case. It may reflect only a compromise or a belief that paying a fine is more advantageous than litigation. Considerations of fairness to civil litigants and regard for expeditious administration of criminal justice combine to prohibit the application of collateral estoppel against a party who having pleaded guilty to a criminal charge, seeks for the first time to litigate his cause in a civil action")(citations omitted). See generally 18 A.L.R. 2d 1287, 1311 (1951); cf. Ellis v. Dyson, 421 U.S. 476 (1975)(deciding affirmative challenge to state statute notwithstanding prior nolo plea to violation of statute); Lawlor v. National Screen Service Corp., 349 U.S. 322, 326-27 (1955)(denying collateral estoppel effect to judgment based on the parties' consent and unaccompanied by findings); United States v. International Building Co., 345 U.S. 502, 506 (1952)(same).

bargaining in the Brady trilogy[10] and North Carolina v. Alford, 400 U.S. 25 (1971). In Brady, this Court stressed that a defendant might intelligently plead guilty for any number of reasons, some bearing on factual guilt and some quite unrelated to it.[11] In Alford, the Court held that a court could accept a guilty plea even from a defendant who denied his factual guilt, reasoning that there are

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10. Brady v. United States, 397 U.S. 742 (1970); McMann v. Richardson, 397 U.S. 759 (1970); Parker v. North Carolina, 397 U.S. 790 (1970).

11. "For some people, their breach of a State's law is alone sufficient reason for surrendering themselves and accepting punishment. For others, apprehension and charge, both threatening acts by the Government, jar them into admitting their guilt. In still other cases, the post-indictment accumulation of evidence may convince the defendant and his counsel that a trial is not worth the agony and expense to the defendant and his family. All these pleas of guilty are valid in spite of the State's responsibility for some of the factors motivating the pleas ... "
397 U.S. at 750.

myriad factors and pressures which might lead even an innocent defendant voluntarily and intelligently to condemn himself and accept a bargained disposition.[12] This Court's realistic understanding in those cases of the myriad non-guilt-related reasons which may validly induce a guilty plea is wholly inconsistent with petitioners' mechanical equation of a guilty plea with confession of factual guilt of each element charged. A defendant who pleads guilty accepts the consequences of his plea insofar as a judgment of conviction and its attendant criminal

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12. The following passage quoted approvingly by the Court had presaged its opinion in Alford by a century:

> "Reasons other than the fact that he is guilty may induce a defendant to so plead ... [and] [h]e must be permitted to judge for himself in this respect."

Alford, 400 U.S. at 33 quoting Iowa v. Kaufman, 51 Iowa 578, 580, 2 N.W. 275, 276 (1879).

penalties is concerned; but he is neither advised of nor can he be thought to accept collateral civil consequences at the hands of private litigants with whom he has not engaged in the give and take of a bargain. Accordingly, this Court should reject what the Fourth Circuit saw as "emerging doctrine" in some circuits permitting collateral estoppel, or something quite like it, on issues that are elements of the crime. See Prosise v. Haring, 667 F.2d 1133, 1140 (4th Cir. 1982).

2. Even Assuming Arguendo That A Guilty Plea Has Collateral Estoppel Effect On Issues Related To The Elements Of The Crime, Fourth Amendment Issues Are Entirely Unrelated To Factual Guilt And Are Neither Actually Nor Necessarily Determined Through A Guilty Plea.

Even if Brady and Alford did not foreclose adoption of an "emerging doctrine" under which guilty pleas can estop relitigation of elements of the crime, collateral estoppel would still be unavailing here. While a defendant's guilty plea

might "remove[] the issue of factual guilt from the case", Menna 423 U.S. at 62-63 n.2, issues unrelated to factual guilt or innocence are neither actually nor necessarily determined through an admission of guilt. Tollett v. Henderson, supra (valid acceptance of guilty plea not logically inconsistent with antecedent constitutional violations); see also Menna v. New York (same).

Although the Tollett doctrine arose in the context of antecedent constitutional violations that were part and parcel of the criminal justice process, and that had some bearing on questions of guilt or innocence, its rationale would seem to apply a fortiori to unrelated antecedent violations with no such bearing, like the Fourth Amendment violation here. This Court has repeatedly recognized that

Fourth Amendment claims are entirely unrelated to the fact finding process. See Stone v. Powell, 428 U.S. 465, 474 (1976); Linkletter v. Walker, 381 U.S. 618, 638 (1965). "Rather, the protections of the Fourth Amendment are of a wholly different order and have nothing whatever to do with promoting the fair ascertainment of truth at a criminal trial." Schneckcloth v. Bustamonte, 412 U.S. 218, 242 (1973).

Again, this Court's understanding in Brady that "[f]or some people, their breach of a State's law is alone sufficient reason for surrendering themselves and accepting punishment", 397 U.S. at 750, is inconsistent with the view that any defendant who had a Fourth Amendment claim would choose to raise it at trial rather than foregoing it in a plea bargain. A defendant may, like Raskolnikov in Crime and Punishment, choose to accept his

guilt. The plea may be more attractive than the prospects of criminal trial and probably enhanced punishment. The Fourth Amendment claim, while valid, may not be likely to avoid conviction in light of other evidence. In short, there is simply no reason for believing that a guilty plea is inconsistent, as a matter of logic or human behavior, with an antecedent Fourth Amendment violation. Accordingly, a guilty plea could not estop a defendant's subsequent assertion of Fourth Amendment claims in a related damage action, even if it could estop relitigation of elements of the crime.

C. Application Of Collateral Estoppel To Preclude § 1983 Fourth Amendment Claims Never Before Raised Is Unsupported By Any Sound Policy Considerations.

Whether preclusive effect is measured by state law, see Kremer v. Chemical Construction Co., supra, or general princi-

ples, see Montana v. United States, supra, it seems settled that there is no room in § 1983 cases for preclusion rules more rigorous than those ordinarily used. See Allen v. McCurry, 449 U.S. at 95 n.7. Since under neither approach is preclusion permissible under the circumstances of this case, analysis of the policy considerations preclusion would raise would appear unnecessary and inappropriate. Nevertheless, if those policies are relevant at all, it is apparent that they strongly militate against preclusion, whether approached from the standpoints of the criminal justice system, the Fourth Amendment, or § 1983.

First, since as noted in Point I, supra, § 1983 is not a device to attack guilty pleas collaterally, preclusion is not necessary to avoid undermining the finality of convictions. Moreover, where the state criminal court has simply not

been presented with or adjudicated the Fourth Amendment issues, a subsequent § 1983 action would not generate or indicate any disrespect for state judgments, or disrupt the comity between federal and state courts.

Moreover, from the standpoint of the criminal justice system, the guilty plea and the often concomitant plea bargaining are important components. "Properly administered they can benefit all concerned." Bordenkircher v. Hayes, 434 U.S. 357, 361-62 (1978). A rule holding that guilty pleas preclude assertions of civil damage claims might discourage some defendants -- particularly those subject to the most outrageous illegal searches or seizures -- from accepting guilty pleas, and thereby reduce the voluntary and proper reliance on the plea bargaining process.

On the other hand, precluding the

assertion of § 1983 Fourth Amendment claims which could have been the basis of motions to suppress[13] would undermine several important policies inherent in § 1983 and the Fourth Amendment. Section 1983 damage actions serve to compensate persons injured by deprivation of federal rights and to prevent abuses of power by state officials. Robertson v. Wegmann, 436 U.S. 584, 591 (1978). Indeed, "[a] damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional liberties," Owen v. City of Independence, 445 U.S. 622, 651 (1980). Applying collateral estoppel in this context would defeat the compensatory and deterrent

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13. We note that a substantial number of Fourth Amendment claims could not be subject to related motions to suppress, and therefore could not be precluded under any theory, unless the purpose of preclusion is additional punishment. See United States v. Crews, 445 U.S. 463 (1980); Frisbie v. Collins, 342 U.S. 519 (1952).

policies underlying § 1983 and subvert vindication of the Fourth Amendment.[14] "It is almost axiomatic that the threat of damages has a deterrent effect ... surely particularly so when the individual officer faces personal financial liability." Carlson v. Green, 446 U.S. 14, 21 (1980). Since, judging from reported cases, no constitutional norm would appear to be more massively and flagrantly violated than the Fourth Amendment, removing the substantial deterrent effect of damages is insupportable.

Apart from § 1983, the exclusionary rule provides the only other means of effectuating the rights secured by the Fourth Amendment. However, "the rule

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14. In City of Newport v. Facts Concert, Inc., 453 U.S. 247, 267 (1981), this Court articulated an additional policy served by § 1983 actions -- retribution of constitutional violaters. This policy would also be frustrated by the unnecessary preclusion of § 1983 claims.

is calculated to prevent, not repair", Elkins v. United States, 346 U.S. 206, 217 (1960), and its application is "unsupportable as reparation or compensatory dispensation to the injured criminal", Stone v. Powell, 478 U.S. at 476 n.24, quoting Amsterdam, Search, Seizure and Section 2255: A Comment, 112 U.Pa.L.Rev. 378, 388-89 (1964). Holding § 1983 damage claims precluded by guilty pleas (and, presumably by convictions) would thus eliminate the only remedy designed to compensate victims of illegal searches and seizures, where those victims are found guilty in related criminal proceedings.

The petitioners' suggested rule of preclusion would undermine an additional consideration underlying § 1983: the policy in favor of providing a federal forum for determination of federal constitutional rights. This Court has repeatedly acknowledged "the paramount

role Congress has assigned to the federal courts to protect constitutional rights." Steffel v. Thompson, 415 U.S. 452, 472-73 (1974). See, e.g., McNeese v. Board of Education, 373 U.S. 668 (1963); Monroe v. Pape, 365 U.S. 167 (1961). Although con-congressional recognition of the primacy of federal courts as guardians of federal civil rights is not a justification for inferring an intent to override the application of settled conventional collateral estoppel principles, see Allen v. McCurry, 449 U.S. at 98-99, it is still a significant consideration mitigating against the unwarranted and unnecessary extension of preclusion principles beyond the traditional extent determined by Congress in 28 U.S.C. § 1738.

Nor is the possibility of increased frivolous litigation a justification for using preclusion to thwart the vindica-

tion of constitutional liberties.[15] As in cases involving far less substantial interests, Rules 12 (b) and 56 of the Federal Rules of Civil Procedure provide adequate methods of screening groundless lawsuits.

Finally, we note that sound policy considerations strongly argue against a collateral estoppel rule that looks to each defendant's incentive to have raised the Fourth Amendment issue in the prior criminal proceeding. Such a rule would undermine all of the important policy considerations previously mentioned. In addition, the rationalization for such a rule proceeds on the incorrect assumption that defendants only plead guilty

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15. None of the statistics presented by amici in support of petitioners indicates anything whatsoever concerning groundless Fourth Amendment claims asserted after guilty pleas. In any event, Congress has already devised a non-judicial procedure for resolving many of the cases over which amici are so alarmed. See Patsy v. Board of Regents, 73 L.Ed.2d 172, 182-85 (1982).

out of fear of conviction at trial. For those who, as the Brady Court understood, merely choose to accept their guilt, or who plead guilty for other reasons among the myriad factors motivating guilty pleas, see supra at 19-26, the incentive to have raised the Fourth Amendment issues in prior criminal proceedings is irrelevant. Moreover, the additional judicial proceedings required even to attempt to ascertain 1) that a defendant's reason for pleading guilty was fear of conviction at trial; and 2) that such fear would not have motivated a guilty plea, in the absence of the illegally seized evidence, would subvert the primary policy underlying the collateral estoppel doctrine -- judicial economy.

CONCLUSION

For the foregoing reasons, amicus respectfully submits that the judgment

of the Court of Appeals below should be affirmed.

Respectfully submitted,

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